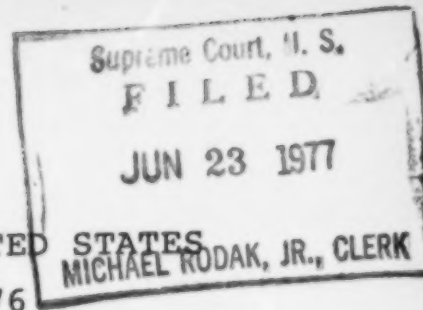


IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976
No. 76-1828



H. D. GROSS dba VALLEY
ROCK AND SAND CORPORATION,

Appellant,

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Appellee.

On Appeal From the Supreme Court
of the State of California

JURISDICTIONAL STATEMENT

PETER AMSCHER

120 South Harvard Street
Hemet, CA 92343
(714) 658-9458

Counsel for Appellant

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976

No. _____

H. D. GROSS dba VALLEY
ROCK AND SAND CORPORATION,

Appellant,

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Appellee.

On Appeal From the Supreme Court
of the State of California

JURISDICTIONAL STATEMENT

PETER AMSCHER

120 South Harvard Street
Hemet, CA 92343
(714) 658-9458

Counsel for Appellant

SUBJECT INDEX

	<u>Page</u>
TABLE OF AUTHORITIES	ii
JURISDICTION	1
QUESTIONS PRESENTED	4
STATEMENT OF CASE	5
THE FEDERAL QUESTIONS ARE SUBSTANTIAL	7
CONCLUSION	9
APPENDIX "A" Acknowledgment of Service	
APPENDIX "B" Notice of Appeal	
APPENDIX "C" Certification to Court of Appeal	
APPENDIX "D" Denial of Transfer by Court of Appeal	
APPENDIX "E" Refusal of California Supreme Court to Mandate Transfer	

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Anderson Nat. Bank v. Lueckett 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692	9
Douglas v. California 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811	2
Gotthilf v. Sills 375 U.S. 79, 84 S.Ct. 187, 11 L.Ed.2d 159	2
Grannis v. Ordean 234 U. 385, 34 S.Ct. 779, 58 L.Ed. 1363	8
Milliken v. Meyer 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 287	9
Panama Refining Co. v. Ryan 293 U.S. 388, 55 S.Ct. 241, 79 L.Ed. 446	8
Prudential Ins. Co. v. Cheek 259 U.S. 530, 42 S.Ct. 516, 66 L.Ed. 1044	2
Schechter Poultry Corp. v. United States 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570	8
<u>Statutes</u>	
Title 28 U.S.C. § 1257(2)	2
California Water Code § 13050(d)	4
California Water Code § 13260(a)	2, 3 5
California Water Code § 13261	4, 8

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976
No. _____

H. D. GROSS dba VALLEY
ROCK AND SAND CORPORATION,
Appellant,
vs.
PEOPLE OF THE STATE OF
CALIFORNIA,
Appellee.

JURISDICTIONAL STATEMENT

JURISDICTION

No written opinion has been provided
to Appellant by any state court herein.

The grounds on which the jurisdiction
of this Court is involved are that the
validity of a state statute has been
drawn in question.

The nature of the proceeding below is
a criminal action and the statute pursuant

to which it was brought is California Water Code, Division 7, § 13260(a).

The Judgment sought to be reviewed is dated February 4, 1977. The case was certified for transfer to the Court of Appeal on February 8, 1977 by the Superior Court Appellate Department. The Court of Appeal denied a transfer of the case to itself on February 14, 1977. The California Supreme Court refused to order the Court of Appeal to accept transfer of the case on March 24, 1977.

The jurisdiction of this Court is invoked under § 1257(2) of Title 28 of the United States Code.

The cases which sustain jurisdiction are Gotthilf v. Sills (1963) 375 U.S. 79, 79-80, 84 S.Ct. 187, 11 L.Ed.2d 159; Prudential Ins. Co. v. Cheek (1922) 259 U.S. 530, 533-34, 42 S.Ct. 516, 66 L.Ed. 1044; Douglas v. California (1963) 372 U.S. 353, 354 fn 1, 83 S.Ct. 814, 9 L.Ed. 2d 811.

The statutory Provisions complained of are found in the California Water Code, as follows:

Water Code Section 13260 (a).

"Any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, and any person who is a citizen, domiciliary, or political agency or entity of this State discharging waste outside the boundaries of the State in a manner that could affect the quality of the waters of the State within any region, shall file with the Regional Board of that region, a report of the discharge, containing such information as may be required by the Board. No report need be filed when such requirement is waived pursuant to Section 13269.

(b) Every such person discharging waste shall file with the regional board of that region a report of any material change or proposed change in the character, location, or volume of the discharge.

(c) Each report under this section shall be sworn to or submitted under penalty of perjury.

(d) Each report under this section shall be accompanied by filing fee of not to exceed one thousand (\$1000) according to a reasonable fee schedule established by the state board.

(e) When a report filed by any person pursuant to this section is

not adequate in the judgment of the regional board, the board may require such person to supply such additional information as it deems necessary."

Water Code Section 13050 (d).

"'Waste' includes sewage and any and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal."

Water Code Section 13261.

"Any person failing to furnish a report under Section 13260 when so requested by a regional board is guilty of a misdemeanor."

No state court has furnished Appellant with a written opinion. The Notice of Appeal herein is included in Appendix "B" hereto.

QUESTIONS PRESENTED

Questions presented by this appeal are whether the Water Code section under which Appellant was convicted violates the Constitution of the United States

by establishing a void delegation of judicial power to an administrative agency, and by delegating unbridled discretion to an administrative agency to determine its own jurisdiction; and is void for failure to provide timely and adequate notice of a determination that a person is subject to its provisions, or to provide for notice of any other determinations; and is void for failure to provide a hearing to persons not in agreement with decisions of the agency; and because the statutory section is uncertain, indefinite, overbroad, vague, and subject to arbitrary interpretation.

STATEMENT OF CASE

Appellant is the owner and operator of a rock and sand production plant. Sand is mined on the premises and is washed and placed in piles for sale to the general public. The water used to wash the sand is conducted to ponds on the premises for re-use.

Appellant was charged with a violation of Division 7 § 13260 (a) of the California Water Code, a misdemeanor, in that he

failed to pay a filing fee of not to exceed \$1,000.00 to the California Regional Water Quality Control Board.

The state agency maintained that Appellant was in fact discharging "waste" as defined in the statute and therefor must file a report and pay a filing fee. The instant misdemeanor action followed Appellant's refusal to pay any filing fee.

A pre-trial motion to dismiss was brought on the ground that the statutory provisions are in violation of the United States Constitution by reason of being vague, uncertain and overbroad. The motion was denied and appellant thereafter was convicted in a jury trial. Execution of sentence was stayed pending appeal.

On appeal to the Appellate Department of the Superior Court, Appellant maintained that the said statutory provisions were invalid for the same reasons as in the questions presented in this appeal. The Appellate Department affirmed the Judgment on February 4, 1977, but certified the case to the Court of Appeal as necessary to settle an important question

of law. The certification order is included in Appendix "C" hereto.

The Court of Appeal refused to exercise its discretion to transfer the appeal, and the denial of transfer is included in Appendix "D" hereto. The California Supreme Court denied Appellant's petition for Writ of Mandate to command the Court of Appeal to so transfer the case. The denial by the Supreme Court is included in Appendix "E" hereto.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

This law confers upon an administrative agency the right arbitrarily to determine the adjudicative fact of whether or not a particular person is "discharging waste". Once this factual determination is made, such person becomes subject to the provisions, including criminal penalties, of the act.

The statutory scheme does not present any effective opportunity to a person to confront witnesses who maintain that there is a waste discharge nor to present evidence and arguments that there is in fact no waste discharge and to thus

challenge the jurisdiction of the agency.

The uncontrolled discretion thus granted to the administrative agency to determine who is in fact subject to its jurisdiction, and the failure of the statutory scheme to set forth sufficiently definite standards regarding its jurisdiction render the statute void. Schechter Poultry Corp. v. United States, 295 U.S. 495, 55 S.Ct. 837, 848, 79 L.Ed. 1570; Panama Refining Co. v. Ryan, 293 U.S. 388, 55 S.Ct. 241, 79 L.Ed. 466.

Water Code § 13261 provides that it is a misdemeanor to fail to furnish a report "when so requested by a regional board."

The statute does not state whether or not the "request" by the regional board must be in writing, or whether such "request" may be oral, nor does the statute declare what form the "request" must take, nor whether notice of the "request" shall be furnished to a person by personal service, posting, or by mail. Such insufficient notice procedures do not afford due process of law. Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58

L.Ed. 278; Anderson Nat. Bank v. Lockett, 321 U.S. 233, 64 S.Ct. 599, 606, 88 L.Ed. 692; Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278.

A substantial federal question is also presented by reason of the fact that the statutory provisions are so vague and uncertain that men of common intelligence must guess at their meaning and because the provisions are overbroad.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted,
PETER AMSCHEL
Counsel for Appellant

APPENDIX "A"

IN THE MUNICIPAL COURT OF RIVERSIDE
COUNTY, MT. SAN JACINTO JUDICIAL DISTRICT

H. D. GROSS, dba VALLEY	)	ACKNOWLEDG-
ROCK AND SAND CORPORATION,	)	MENT OF SER-
Defendant	)	VICE OF
and Appellant	)	NOTICE OF
vs.	)	APPEAL AND
PEOPLE OF THE STATE	)	OF JURIS-
OF CALIFORNIA,	)	DICTIONAL
	)	STATEMENT
Plaintiff)	
and Appellee.)	

I, LEONARD MANDEL, state:

1. That I am a deputy district attorney for the County of Riverside and an attorney of record for the People of the State of California herein.

2. That I acknowledge receipt of service of a copy of the Notice of Appeal to the United States Supreme Court; and of a copy of the Jurisdictional Statement herein.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 7, 1977, at Hemet, California.

/s/ Leonard Mandel
LEONARD MANDEL

APPENDIX "A"

APPENDIX "B"

IN THE MUNICIPAL COURT OF RIVERSIDE
COUNTY, MT. SAN JACINTO JUDICIAL DISTRICT

H. D. GROSS, dba VALLEY	)	FILED
ROCK AND SAND CORPORATION,	)	1977 JUN-6 PM
	)	4:41
Defendant	)	MUNICIPAL
vs. and Appellant	)	COURT
	)	HEMET-SAN
PEOPLE OF THE STATE	)	JACINTO
OF CALIFORNIA,	)	JUDICIAL
Plaintiff	)	DISTRICT
and Appellee.)	

NOTICE OF APPEAL TO THE SUPREME COURT OF
THE UNITED STATES

NOTICE IS HEREBY GIVEN that H.D. Gross
dba VALLEY ROCK AND SAND CORPORATION,
Defendant and Appellant herein, hereby
appeals to the Supreme Court of the
United States from the final Judgment of
this Court entered on November 22, 1977,
a hearing on which was denied by the Cali-
fornia Supreme Court on March 24, 1977.

This appeal is taken pursuant to Sec-
tion 1257 (a) of Title 28 of the United
States Code.

Dated: June 6, 1977

AMSHEL LAW CORPORATION
By Peter Amschel
Peter Amschel, Attorney
for Defendant & Appellant

APPENDIX "B"

APPENDIX "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE

Title:

PEOPLE OF THE STATE vs H.D. GROSS, dba
OF CALIFORNIA, VALLEY SAND &
ROCK

Date & Dept. Number

2-8-77 APP. A-594

Counsel:

Reporter:

District Amschel Law Corp. None
Attorney

Proceeding:

CERTIFICATION TO COURT OF APPEAL

Application for Certification to Court of
Appeal having been read and considered,
same is granted and the entire above
referenced matter is hereby certified to
the District Court of Appeal, Fourth
Appellate District, Division II, pursuant
to the provisions of Rule 63 of the
CALIFORNIA RULES OF COURT.

/ R/A CAL. 2 ATTY(S). SCHULTE, Judge
Stratton, Clerk

MINUTES OF SUPERIOR COURT

APPENDIX "C"

APPENDIX "D"

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT

Court of Appeal - Fourth Dist.

FILED

FEB 14 1977

ERVIN J. TUSZYNSKI, Clerk

PEOPLE, ETC.) 4 Crim. NO 9302
Respondent)
vs.) COUNTY NO A-594
H.D. GROSS dba VALLEY)
SAND & ROCK)
Appellant)

BY THE COURT:

A transfer of the appeal in the above
entitled case to this court on certifica-
tion by the Appellate Department of the
Superior Court of the State of California
in and for the County of Riverside is
DENIED.

Gardner, P.J.

Copies to:

County Clerk, Riverside
Atty. Gen., San Diego
Dist. Atty., Riverside
Amschel Law Corp.,
120 S. Harvard St., Hemet, 92343

APPENDIX "D"

APPENDIX "E"

ORDER DENYING ALTERNATIVE WRIT

L.A.

No. 30748

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

GROSS, etc., Petitioner,

v.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION TWO, RESPONDENT:

PEOPLE, Real Party in Interest.

Petition for writ of Mandate DENIED

SUPREME COURT

FILED

MAR 24 1977

G. E. Bishel, Clerk

Tobriner

Acting Chief Justice

APPENDIX "E"